Filed 10/17/22 Grupo Deco California v. Downs CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

GRUPO DECO CALIFORNIA CORPORATION,

Plaintiff, Cross-defendant and Appellant,

v.

NANCY L. DOWNS, as Trustee, etc., et al.,

Defendants, Cross-complainants and Appellants;

ACTION PLUS MARKETING, LLC,

Defendant, Cross-complainant and Appellant.

B305748 and B308965

(Los Angeles County Super. Ct. No. BC708558)

APPEALS from a judgment and postjudment order of the Superior Court of Los Angeles County, Terry A. Green. Affirmed.

Law Offices of Joseph D. Tuchmayer and Joseph D. Tuchmayer for Plaintiff, Cross-defendant and Appellant Grupo Deco California Corporation.

Law Offices of Louis J. Esbin and Louis J. Esbin for Defendant, Cross-complainant and Appellant Action Plus Marketing, LLC.

Hennelly & Grossfeld, Michael G. King and Susan J. Williams for Defendant and Respondent Nancy L. Downs, as Trustee of 2000 Nancy L. Downs Revocable Trust.

Law Offices of Michael Leight, Michael Leight and John Gloger for Cross-complainant and Appellant Nancy L. Downs, Trustee.

---

Grupo Deco California Corporation operated a funeral home on real property it leased on Rosecrans Avenue in Paramount. Both Nancy L. Downs as trustee of the 2000 Nancy L. Downs Revocable Trust and Action Plus Marketing, LLC claimed to be the property's owner. Faced with conflicting demands for payment of rent, Grupo Deco filed its complaint in interpleader against Downs and Action Plus in June 2018. Downs filed a cross-complaint for quiet title and declaratory relief, and Action Plus filed a cross-complaint for declaratory relief, breach of contract and related causes of action—each pleading asserting the pleader's claimed right to fee ownership of the Paramount property. During the pendency of the

interpleader action, Grupo Deco paid a portion of its monthly rent to Downs and deposited the balance with the court.

The trial court granted Downs's motion for summary judgment, determining the 2000 option agreement pursuant to which Action Plus purportedly acquired the Paramount property in 2018 was unenforceable, and entered judgment in favor of Downs on Grupo Deco's complaint in interpleader and Action Plus's cross-complaint, quieted title to the Paramount property in favor of Downs, and ordered the clerk to distribute all interpleader funds deposited with the court to Downs. The court awarded attorney fees and costs to Downs against Action Plus but denied Downs's request for fees and costs against Grupo Deco.

In the main appeal (case No. B305748) Action Plus and Grupo Deco contend there were triable issues of material fact concerning the enforceability of the option to purchase the Paramount property purportedly exercised by Action Plus that should have precluded summary judgment in favor of Downs. In the fees appeal (case No. B308965) Downs argues the trial court improperly ruled attorney fees were not recoverable by the successful claimant against an interpleader plaintiff/stakeholder and, even if the court's ruling were otherwise correct, it erred in concluding Grupo Deco was entitled to protection as an interpleader stakeholder because Grupo Deco colluded with Action Plus to manufacture a sham interpleader claim. We affirm both the judgment and the postjudgment fee order.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *Grupo Deco's Lease and Option To Purchase*

Rose Mortuary, Inc. purchased the Paramount property in late December 1999. On April 20, 2000 Rose Mortuary, as

landlord, and Grupo Deco, as tenant, entered into a long-term lease agreement for the property, commencing May 1, 2000 and ending at 12:01 a.m. on April 30, 2018. Paragraph 12 of the lease agreement provided, "Tenant shall not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises, without first obtaining the written consent of Landlord, which shall not be unreasonably withheld." Paragraph 29, "Sole and Only Agreement," contained a partial integration clause, providing in part, "This instrument constitutes the sole and only full, final, and complete agreement with the exception of Tenant's Option to Purchase the Real Property executed concurrently herewith between Landlord and Tenant respecting the Premises or the leasing of the Leased Space to Tenant."

Contemporaneously with executing the lease agreement, Grupo Deco and Rose Mortuary entered into an option agreement granting Grupo Deco the option to purchase the Paramount property for $667,000. Grupo Deco paid $167,000 to acquire the option, a sum that would be applied to the purchase price if the option was exercised. The purchase price would also be reduced by a certain portion of the rent paid by Grupo Deco.

The option period commenced May 1, 2000 and remained in effect until 12:01 a.m. on April 30, 2018. The agreement provided the option could be exercised by "tender" to Rose Mortuary of an instrument "in the form of Exhibit B"—an attachment reciting that Grupo Deco was exercising the option—and further provided that any notice, tender or delivery under the agreement "may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and will be deemed communicated as of mailing." Rose Mortuary had the

right to terminate the option "[i]f at any time prior to expiration of the Option, Optionee shall be in default under the Lease which default is not cured under the cure period." The final paragraph stated the option was binding upon and inured to the benefit of the parties and their heirs, personal representatives, successors and assigns.

2. *The 2013 Purchase and Sale Agreement*

In 2013 Michael Leavitt, president of Rose Mortuary, notified Grupo Deco's chief financial officer, Salvador Canales, that Rose Mortuary intended to sell the Paramount property. After some discussion Rose Mortuary and Grupo Deco entered into a purchase and sale agreement and joint escrow instructions for the Paramount property on November 13, 2013 with a purchase price of $500,000. The agreement recited that Grupo Deco was currently occupying the property as a tenant under the "Lease," which was defined as "that certain Lease for the Property between Buyer and Seller dated April 20, 2002 [*sic*]," and provided Grupo Deco would remain a tenant under the lease until the close of escrow, at which time the lease would terminate "without any further action or execution of documents." The agreement similarly defined the "Option Agreement" as "the Option Agreement, dated April 20, 2002 [*sic*], entered into by Buyer and Seller," and provided in paragraph 15, "For purposes of completing this transaction, Buyer waives any rights it may have, if any, under the Option Agreement. The Parties agree that upon execution of this Agreement the Option Agreement shall automatically terminate and be of no force or effect."

Paragraph 27(k) of the purchase and sale agreement included an integration clause stating, "This Agreement constitutes the entire understanding and agreement of the

parties as to the matters set forth in this Agreement and supersedes all prior agreements whether oral or written." The agreement provided it would be "effective as of the date of the mutual execution of the Parties." Canales signed the agreement on November 15, 2013 on behalf of Grupo Deco. Leavitt signed on behalf of Rose Mortuary the same day.

Grupo Deco was unable to complete the proposed sale. On January 3, 2014 escrow was cancelled, and the escrow company returned Grupo Deco's initial deposit less a $300 escrow cancellation fee. Grupo Deco continued as a tenant of Rose Mortuary on the Paramount property.

3. *The Sale to Downs, the Proposal for a New Lease and the Purported Exercise of the Option*

In April 2014 Rose Mortuary sold the Paramount property for $655,000 to Nancy L. Downs as trustee of the 2000 Nancy L. Downs Revocable Trust. As part of the buyer's due diligence efforts in connection with the sale, Rose Mortuary provided a property information sheet, which identified the existing lease with Grupo Deco and stated the owner of the Paramount property had no actual knowledge of any options to purchase, rights of first refusal, rights of first offer or any similar agreements affecting the property.

On February 28, 2018 Joseph Tuchmayer, counsel for Grupo Deco, emailed Downs a proposal for a new lease covering the Paramount property, starting May 1, 2018, for an initial seven-year term with five options, each for a five-year term. Tuchmayer's proposal included an "[o]ption to buy at 10% below market price, exercisable when [or] if property [is] placed on market, or six (6) months prior to expiration of lease term, including any exercised option term." Although Grupo Deco

remained in possession of the Paramount property throughout these proceedings, Downs and Grupo Deco disputed whether Grupo Deco's proposal for a new lease was accepted.[1]

On Sunday, April 29, 2018 Tuchmayer, as vice president of Grupo Deco, executed an assignment of option, assigning to Action Plus all of its rights in the 2000 option agreement between Grupo Deco and Rose Mortuary. The document recited that Grupo Deco was then in possession of the property through a leasehold interest that terminated on April 30, 2018 and that the lease had not, as of the time of the assignment, been extended. The assignment agreement attached as its exhibit 1 a copy of the

---

[1] No new lease agreement was signed by the parties. In a declaration in support of an ex parte application for restraining order filed earlier in the proceedings, Tuchmayer stated, "On or about April 23, 2018, I personally met with Ms. Downs and negotiated a new lease for Grupo's continued possession of the Property for at least a five (5) year term commencing May 1, 2018. Among other terms agreed upon was that Grupo's lease payment was to be $9,700 commencing May 1, 2018, which rent included taxes and insurance." In a declaration filed with Action Plus's opposition to a pleading motion, Tuchmayer attached copies of emails exchanged among Tuchmayer, Downs and Victor Gonzalez, chief executive officer of Grupo Deco, between April 30, 2018 and May 3, 2018, which included as an attachment to one of Downs's emails a draft standard commercial single-tenant lease, and indicated the parties intended to sign a new lease agreement with a monthly rent of $9,700 commencing May 1, 2018. That draft lease was never finalized or executed.

In her May 3, 2018 email to Gonzalez as part of this exchange, Downs requested a copy of "the expired lease and option." Gonzalez forwarded that email to Tuchmayer an hour later without comment.

2000 Rose Mortuary-Grupo Deco option agreement and as exhibit 2 what it denominated an "(Amended) Notice of Exercise of Option," which purported to replace Exhibit B to the 2000 option agreement.

Also on April 29, 2018 Brian Dozier, as managing member of Action Plus, executed the amended notice of exercise of option. The signed document was deposited "in a United States Post Office mail receptable [*sic*]" on April 29, 2018 by Action Plus's attorney, addressed to Nancy L. Downs, Trustee, Nancy L. Downs Trust. The envelope shows a postal meter date of May 1, 2018. Downs received the notice by regular mail on May 3, 2018.

4. *The Complaint in Interpleader and Cross-complaints*

On June 1, 2018 Grupo Deco filed its complaint in interpleader pursuant to Code of Civil Procedure section 386,[2] naming as defendants the 2000 Nancy L. Downs Revocable Trust, Nancy L. Downs as trustee of the 2000 Nancy L. Downs Revocable Trust and Action Plus. Following allegations describing Grupo Deco's 2000 lease and option agreements with Rose Mortuary, the sale of the Paramount property to Downs, Grupo Deco's assignment of its rights under the 2000 option agreement to Action Plus and Action Plus's purported exercise of the option, Grupo Deco alleged it had paid the Downs trust $9,700 on May 1, 2018 as the agreed monthly rent pursuant to the new lease for the property, but on May 30, 2018 Action Plus informed the Downs trust and Grupo Deco that it, not the trust, was entitled to receive all rents from May 1, 2018 forward. Discussions among counsel for Grupo Deco, Downs and Action

---

[2] Statutory references are to this code unless otherwise stated.

Plus were unable to resolve the ownership dispute: Downs insisted she, not Action Plus, was the owner of the Paramount property and denied that Action Plus had exercised an enforceable option to purchase it. Facing the conflicting claims for rent, Grupo Deco deposited with the court $9,700 as payment for June 2018 rent, "which sum the Defendants and each of them appear to claim to be money owed to them." Grupo Deco acknowledged it had no interest in the money and averred it would continue to deposit its monthly payments for the rent and use of the property until otherwise ordered by the court. In its prayer for relief Grupo Deco requested the court determine and enter an order setting forth the proper recipient of the interpleaded funds and that it be discharged from all liability to each defendant with respect to those funds.[3]

Downs answered the interpleader complaint, denying Action Plus properly exercised an enforceable option. As an

---

[3] Several months after Grupo Deco filed its complaint in interpleader, Downs filed an unlawful detainer action against Grupo Deco, alleging nonpayment of rent since May 2018. Grupo Deco's motion to relate the interpleader and unlawful detainer actions was denied. On November 28, 2018, in response to Grupo Deco's petition (B293752), we issued an alternative writ of mandate directing the superior court to vacate its order denying the motion to relate and to make a new order granting the motion and staying the unlawful detainer action or to show cause why it had not done so. In response the superior court, following a contested hearing, granted the motion to relate, stayed the unlawful detainer action and ordered Grupo Deco to pay a specified amount directly to Downs (to assist in payment of the amount due on a secured loan on the property, real estate taxes and insurance) and to deposit monthly with the court the difference between that sum and $9,700.

affirmative defense Downs alleged Grupo Deco knew the 2000 option agreement "had been revoked and terminated prior to Downs' purchase of the subject property." Downs also filed a cross-complaint for quiet title and declaratory relief, alleging, in part, the 2013 sales agreement provided the 2000 option agreement was automatically terminated upon execution of the sales agreement. Both Action Plus and Grupo Deco answered Downs's cross-complaint.

Action Plus answered the interpleader complaint and filed a cross-complaint and an amended cross-complaint against Downs and Grupo Deco for declaratory relief, specific performance against Downs, and breach of contract and common counts against Grupo Deco, alleging Grupo Deco was obligated to pay rent to Action Plus and Downs was required to convey to Action Plus all right, title, claims and interests in the Paramount property. Downs answered Action Plus's cross-complaint; Grupo Deco did not.

5. *Downs's Motion for Summary Judgment, Action Plus's Opposition and the Court's Ruling Granting the Motion*

a. *The moving papers*

On July 12, 2019 Downs moved for summary judgment, or in the alternative summary adjudication, as to Grupo Deco's complaint in interpleader, Action Plus's amended cross-complaint and Downs's cross-complaint, asserting, in part, undisputed facts established the 2000 option agreement was terminated by Rose Mortuary due to Grupo Deco's defaults under the lease; the option agreement was terminated upon execution of the 2013 purchase and sale agreement; the purported assignment of the option agreement to Action Plus was a nullity; and title to the Paramount property should be quieted in Downs as of April 14,

2014, the date of recording of the grant deed from Rose Mortuary to Downs. Downs also contended Action Plus failed to timely exercise the option, pointing out that the notice sent to Downs was postmarked after the option had expired.

b. *Action Plus's opposition*

In its opposition to Downs's motion Action Plus advanced as a disputed issue precluding summary judgment the fact that Downs in her answer to Action Plus's first amended cross-complaint denied the existence of both the 2000 lease and the 2000 option agreement. Characterizing these denials as "judicial admissions," Action Plus argued, "If they were never entered into, as Downs admitted, then by Downs' own admission there is neither the Lease nor the April 2000 Option to either enforce or interpret and, therefore, the MSJ fails and must be denied." Action Plus also argued, because Downs answered its cross-complaint in both her individual capacity and as trustee of the 2000 Nancy L. Downs Revocable Trust—even though she had not been sued in her individual capacity—the "judicial admissions" made by Downs created a triable issue of material fact precluding summary adjudication that title to the Paramount property was properly held by Nancy L. Downs as trustee of the 2000 Nancy L. Downs Revocable Trust.

As to Rose Mortuary's purported termination of the option agreement due to Grupo Deco's uncured lease defaults, Action Plus submitted the declaration of Salvador Canales disputing Michael Leavitt's assertion that Leavitt had discussed with him Grupo Deco's lease defaults and had advised Canales of the option's termination.

Turning to paragraph 15 of the 2013 purchase and sale agreement, Action Plus argued, if Rose Mortuary had terminated

the option agreement due to Grupo Deco's lease defaults prior to November 2013, there would be no option agreement to be canceled by the new agreement, an inconsistency that Action Plus contended established a triable issue of material fact. In addition, Action Plus noted the 2013 purchase and sale agreement referred to an option agreement made in 2002, not 2000, and insisted extrinsic evidence that the parties meant 2000, not 2002, should not be considered to contradict the express terms of the contract.[4] Finally, in his declaration in support of Action Plus's opposition, Canales stated it was his understanding at the time he signed the 2013 purchase and sale agreement that Grupo Deco's rights in the 2000 option would be restored, not terminated, if the transaction did not close.[5]

As for the timing of the exercise of the option, Action Plus submitted the declaration of its counsel that he had timely mailed the notice on Sunday, April 29, 2018.

---

[4] In his declaration in support of Downs's motion, Leavitt averred, "There is a typographical error in the Sale Agreement with regard to the year of the Option. It states 'April 2002' whereas the Option is dated 'April 20, 2000.' [Citation.] The sole Option between Rose and Grupo is dated April 20, 2000."

[5] Canales declared, "At the time I signed the November 2013 Agreement and today, I understood and understand that in light of the second sentence, which was 'waiv[ing]' the Option, as I understood that term is defined in the first sentence, 'for purposes of completing the transaction,' that the third sentence meant that the start date of that waiver was upon signing of the November 2013 Agreement and that if the transaction did not close of any reason then all pre-existing rights were restored, not terminated." (Fns. omitted.)

c. *Grupo Deco's joinder*

Grupo Deco filed a two-page joinder in Action Plus's various filings in opposition to Downs's motion. It filed no legal memorandum or separate statement of its own and presented no additional evidence or arguments that would support denial of Downs's motion for summary judgment.

d. *The court's order granting summary judgment*

The trial court granted Downs's motion for summary judgment, agreeing with her that the 2000 option agreement between Rose Mortuary and Grupo Deco could not be enforced by Action Plus against Downs. Assuming, as Action Plus argued, the option agreement was a stand-alone contract between Rose Mortuary and Grupo Deco and not part of a single transaction with the lease, Downs was not bound by the option agreement, the court ruled, because Rose Mortuary did not assign its rights and obligations under the option agreement to Downs when Downs purchased the Paramount property. Nor had Downs voluntarily assumed those rights and duties. Alternatively, if the lease and option agreements were considered part of a single transaction and Downs, on notice of, and bound by, the 2000 lease agreement, could be deemed to have assumed Rose Mortuary's obligations under the related option agreement, the option still could not be enforced against Downs. The 2000 lease between Grupo Deco and Rose Mortuary provided Grupo Deco could not assign its rights without the landlord's consent, the court explained. Because Downs had not consented to Grupo Deco's assignment of the option agreement to Action Plus, Action Plus's purported exercise of the option was ineffective under this theory as well. The court also found that Action Plus, by depositing the amended notice of exercise of option in a mailbox,

rather than personally delivering it or sending it by registered or certified mail, had not exercised the option in accordance with the terms of the option agreement.

The court rejected Action Plus's assertion the motion should be denied based on Downs's answer denying the existence of the 2000 lease and 2000 option agreements. The court explained Downs could simply move to amend her answer and then refile the motion for summary judgment, requiring the expenditure of additional resources and delaying resolution of the case with no benefit to any party.[6]

In granting Downs's motion, the court declined to base its ruling on the purported termination of the option agreement because of Grupo Deco's uncured defaults under the lease agreement, reasoning Downs's evidence on this point (letters from Rose Mortuary's counsel and unlawful detainer complaints) proved only that Rose Mortuary believed defaults had occurred. The court also found a triable issue of material fact regarding the meaning of the termination provision in the 2013 purchase and sale agreement based on Action Plus's argument that "execution" meant performance of the terms of the agreement, not simply the parties' agreement to its terms: "Here the Declaration of Salvador Canales, one of the signatories of the Sale Agreement,

---

[6] The court also rejected as "absurd" Action Plus's argument it should not recognize as a typographical error the reference in the 2013 agreement to the option agreement being dated April 20, 2002 rather than April 20, 2000, noting there was no evidence there was any other option agreement to which this language could possibly refer. The court had previously overruled Action Plus's objections (lack of foundation and speculation) to the portion of Leavitt's declaration that described that date as a typographical error.

enables Action Plus to make this a triable issue of fact, though only by the barest margin. The term can be read either way." (Fn. omitted.) The court did not identify the language in Canales's declaration that created this triable issue.

Because Action Plus's claims depended on the validity and enforceability of the option agreement, the court ruled, those claims failed. Because Downs as trustee held record title and there were no documents that gave any other party a right to that title, the court further ruled, Downs was entitled to a judgment quieting title in her favor. Moreover, as the owner of the property, Downs alone was entitled to collect rent from Grupo Deco and was entitled to judgment in its favor on the interpleader action.

On February 10, 2020, after the court considered objections to the proposed form of judgment prepared by Downs, judgment was entered in favor of Downs and against Grupo Deco on the complaint in interpleader and in favor of Downs and against Action Plus on its cross-complaint. The court quieted title to the Paramount property in favor of "Nancy L. Downs, Trustee of the 2000 Nancy L. Downs Revocable Trust," and ordered the clerk to distribute all interpleader funds deposited with the court to Downs. The judgment stated Downs was entitled to recover costs of suit from Grupo Deco and Action Plus.

Grupo Deco and Action Plus filed timely notices of appeal.

6. *The Orders Regarding Attorney Fees*

Following entry of judgment Downs moved pursuant to sections 1032 and 1033.5 as the prevailing party for an award of attorney fees and costs, jointly and severally against Grupo Deco and Action Plus. With respect to her request for attorney fees, Downs cited the fee provisions in the 2000 lease agreement and

the 2000 option agreement, contended the claims by Grupo Deco and Action Plus "were on a contract," and cited case authority for the proposition "the courts construe the phrase 'on a contract' as extending to any situation in which the action involves a contract and one of the parties would be entitled to recover attorney fees under the contract if that party prevailed in its lawsuit." Downs initially sought total attorney fees of $173,238.25 for one set of her lawyers (the Leight firm) and $22,980 for a second set (Fidelity National Law Group).

On October 5, 2020 the court denied the motion as to Grupo Deco, concluding, (a) with respect to the interpleader action, a defendant cannot be the prevailing party "because there are no true adverse interests"; and (b) as to her cross-complaint to quiet title, which named Grupo Deco, because there was no net monetary recovery, the court had discretion to determine whether there was a prevailing party and whether to award costs, including attorney fees. (See § 1032, subd. (a)(4).) Because Grupo Deco and Downs were never formally adverse to each other, the court concluded, there was no prevailing party. It also rejected Downs's argument that Grupo Deco had acted in bad faith, cooperating throughout the proceedings with Action Plus, which demonstrated this was not a true interpleader action.

The court granted Downs's motion as to Action Plus, awarding $18,780 for work by the Fidelity National Law Group, after deducting hours devoted to the unlawful detainer proceedings, which the court ruled were separable from, and not necessary to, the litigation over title to the Paramount property.[7]

---

[7] The court declined to award Downs any costs against Grupo Deco for the same reasons it denied the motion for

The court otherwise rejected Action Plus's argument it was not liable for attorney fees Downs incurred while litigating matters against Grupo Deco, explaining "[t]he interpleader and the cross-complaints that followed were two sides of the same coin. To prove entitlement to the interpleader funds, the Trust had to prove title to the property."

After supplemental briefing, on January 8, 2021 the court awarded a total of $81,600 for work by the Leight firm, again eliminating hours related to the unlawful detainer proceedings, deducting hours spent on two discovery motions for which Downs had already been compensated through sanctions awards and further reducing the remaining hours by one-third based on the firm's billing practices.

Downs filed a timely notice of appeal from the court's October 5, 2020 order denying any recovery of attorney fees from Grupo Deco. No party appealed the January 8, 2021 fee order.

## DISCUSSION

### The Main Appeal (B305748)

1. *Standard of Review*

A motion for summary judgment is properly granted only when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (§ 437c, subd. (c).) We review a grant of summary judgment de novo (*Samara v. Matar* (2018) 5 Cal.5th 322, 338) and, viewing the evidence in the light most favorable to the nonmoving party (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618), decide

---

attorney fees. It awarded a total of $2,568.20 in costs against Action Plus.

independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347; *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.)

"There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof" at trial. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord, *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 722.)

When no ambiguity is asserted or there is no conflicting extrinsic evidence concerning the meaning of a purported ambiguity in a contract, the trial court's interpretation of the contract is a legal determination subject to de novo review. (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 393-394; see *Hanna v. Mercedes-Benz USA, LLC* (2019) 36 Cal.App.5th 493, 507 ["in the absence of any conflict in extrinsic evidence presented to clarify an ambiguity," written agreements are interpreted de novo].) "It is solely a judicial function to interpret a written contract unless the interpretation turns upon the credibility of extrinsic evidence, even when conflicting inferences may be drawn from uncontroverted evidence." (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 439; accord, *Gilkyson v. Disney Enterprises, Inc.* (2021) 66 Cal.App.5th 900, 915.)

2. *The Trial Court Should Have Granted Summary Judgment on the Ground the 2013 Purchase and Sale Agreement Terminated Grupo Deco's 2000 Option*

Downs alleged in her answer to Grupo Deco's complaint in interpleader that the 2000 option agreement had been revoked and terminated prior to her purchase of the Paramount property in 2014 and specifically alleged in her cross-complaint to quiet title that the option terminated upon execution (that is, signing by all parties) of the 2013 purchase and sales agreement. Downs's motion for summary judgment argued, in part, Grupo Deco's assignment of the option agreement to Action Plus and Action Plus's purported exercise of the option were ineffective because the option had been terminated by the 2013 purchase and sales agreement. On appeal Downs contends, independent of the grounds identified by the court in granting summary judgment—Downs had not been assigned the option agreement by Rose Mortuary and had not voluntarily assumed any of its obligations and, therefore, was not bound by the agreement; and, alternatively, the option agreement could not be assigned without the landlord's consent—the court erred in declining to rule the 2013 agreement terminated the option. We agree that Action Plus and Grupo Deco failed to demonstrate a triable issue of material fact that would preclude summary judgment as to the meaning of the 2013 agreement and that, under the proper interpretation of the 2013 agreement, Downs was entitled as a matter of law to judgment in her favor.[8]

---

[8] Action Plus addressed Downs's argument concerning the interpretation of the 2013 agreement in the trial court and at length in its reply brief in this court. Accordingly, the issue is properly before us; and we can affirm the order granting

As discussed, the 2013 agreement provided in paragraph 15 that, for purposes of completing the transaction, Grupo Deco waived any rights it may have under the option agreement[9] and that Grupo Deco and Rose Mortuary agreed, "upon execution of

---

summary judgment on this ground, even though not relied upon by the trial court. (See § 437c, subd. (m)(2) [conditions upon which reviewing court may affirm order granting summary judgment on ground not relied upon by trial court]; *Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 336, fn. 1 [although section 437c, subdivision (m)(2), provides that, "[b]efore a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs," supplemental briefing is not required where the parties have already briefed the issue]; *Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 359, fn. 5 [supplemental briefing is not required under section 437c, subdivision (m)(2), where the parties have addressed the issue in their briefs]; *Bains v. Moores* (2009) 172 Cal.App.4th 445, 471, fn. 39 [supplemental briefing not required before court affirms summary judgment on ground not relied upon by trial court when parties had addressed the issue in their appellate briefs; "[t]he purpose of section 437c, subdivision (m)(2) has thus been fully met"]; see also *California Veterinary Medical Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 546.)

[9] The trial court properly relied upon Leavitt's uncontested declaration that the reference in the 2013 agreement to the option as dated April 20, 2002, rather than April 20, 2000, was simply a typographical error. Indeed, the same mistake was made in describing the Grupo Deco-Rose Mortuary lease long-term lease as an April 20, 2002 agreement, confirming the parties were addressing the concurrently executed 2000 lease and option agreements.

this Agreement the Option Agreement shall automatically terminate and be of no force or effect." Moreover, the integration clause (paragraph 27(k)) provided the 2013 agreement constituted the entire understanding of the parties as to the matters set forth in the agreement—which included Grupo Deco's rights under the 2000 option agreement—and superseded all prior agreements concerning a possible sale of the Paramount property.

The trial court advanced two interrelated reasons for rejecting Downs's argument that, pursuant to its express terms, the purchase and sale agreement terminated Grupo Deco's option once executed by the parties on November 15, 2013. First, the term "upon execution" could mean either upon signing or upon completion of the terms of the agreement (that is, upon the close of escrow). Second, Canales's declaration—presumably that he understood Grupo Deco's option rights would be "restored" if the sale was not completed—created a triable issue of material fact as to the meaning of the agreement. That is, although not articulated by the trial court in this manner, the term "upon execution" in paragraph 15 of the 2013 purchase and sale agreement is ambiguous, permitting the parties to introduce parol evidence to assist in interpreting it, and Canales's declaration constituted extrinsic evidence conflicting with Downs's construction of the signed agreement as terminating the 2000 option. (See generally *City of Hope National Medical Center v. Genentech, Inc.*, *supra*, 43 Cal.4th at p. 395 [extrinsic evidence is admissible to interpret an agreement when a material term is ambiguous].) Neither aspect of this analysis was a valid basis for denying Downs's motion for summary judgment.

As to Canales's declaration, although, as the trial court observed, he was a signatory to the 2013 agreement, his uncommunicated understanding of the agreement "was not *competent* extrinsic evidence, because evidence of the undisclosed subjective intent of the parties is irrelevant to determining the meaning of contractual language." (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166, fn. 3; accord, *Zissler v. Saville* (2018) 29 Cal.App.5th 630, 644 [""[t]he parties' undisclosed intent or understanding is irrelevant to contract interpretation""].)[10] No other conflicting extrinsic evidence was introduced concerning the meaning of the paragraph 15 waiver and termination language or the paragraph 27(k) integration clause superseding all prior agreements between the parties concerning sale of the Paramount property. Thus, even though the trial court was correct in finding the term "upon execution" was theoretically capable of two meanings, it remained a task for the court (and now for us) to interpret the parties' agreement, not a disputed factual issue for a jury to decide. (See *Oakland-Alameda County Coliseum Authority v. Golden State Warriors, LLC* (2020) 53 Cal.App.5th 807, 819 ["courts interpret a contract as a matter of law 'even when conflicting inferences may be drawn from the undisputed extrinsic evidence [citations] or that extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation'"]; *Nungaray v. Litton Loan Servicing, LP* (2011) 200 Cal.App.4th 1499, 1504 ["[t]he interpretation of a

---

[10] "[I]t is our responsibility in reviewing an order granting summary judgment to independently determine the effect of the evidence submitted." (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1010, fn. 4.)

contract is a question of law for the court unless the interpretation depends upon the credibility of extrinsic evidence"]; *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126-1127, fn. omitted ["When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law. . . . If, however, there is a conflict in the extrinsic evidence, the factual conflict is to be resolved by the jury"].)

The more reasonable interpretation of the parties' 2013 agreement is that advanced by Downs—upon signing the agreement and committing (with certain contingencies) to purchase the Paramount property for $500,000, Grupo Deco waived any rights it may have had in the 2000 option agreement. Indeed, the parties expressly used the term "execution" to mean signing, not completion of the transaction: Paragraph 3 stated that escrow would be opened "[w]ithin 2 business days after the execution of the Agreement." Plainly execution of the agreement as that term was used by the parties to trigger the opening of escrow could not mean only upon completion of the transaction. Similarly, the last line of the agreement before the parties' signatures provided, "This Agreement is effective as of the date of the mutual execution of the Parties." Again, the use of "execution" in this provision cannot reasonably be interpreted to mean when the transaction is completed. In contrast, when the parties meant to condition a provision of the agreement on the close of escrow, rather than the November 2013 signing, they did so. Thus, paragraph 14 providing for Grupo Deco's release of any claims it might have against Rose Mortuary stated, "As of the Closing, Buyer . . . hereby fully and irrevocably release[s] Seller . . . from any and all claims . . . ." Grupo Deco and Rose

Mortuary's mutual intent as to which terms were effective upon signing and which were effective only upon closing could not be clearer.

This interpretation of the 2013 purchase and sale agreement is reinforced by consideration of the circumstances under which it was made. (Civ. Code, § 1647 ["[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates"]; see *RMR Equipment Rental, Inc. v. Residential Fund 1347, LLC* (2021) 65 Cal.App.5th 383, 396 ["the Supreme Court directs us, when interpreting a contract, to examine its nature and the surrounding circumstances"]; *Admiral Ins. Co. v. Superior Court* (2017) 18 Cal.App.5th 383, 388 ["the language of a contract must be construed in the context of the instrument as a whole and all the surrounding circumstances"]; *Stockton v. Stockton Plaza Corp.* (1968) 261 Cal.App.2d 639, 644 [in interpreting a contract, the court may look to the surrounding circumstances to decide what is reasonable and what the parties intended by the language used].)

As discussed, in 2013 Leavitt told Canales that Rose Mortuary wanted to sell the Paramount property. Canales responded that Grupo Deco wished to purchase the property. The 2013 purchase and sale agreement was the ultimate product of that telephone conversation.[11] It defies logic that, having announced its intention to sell the property, Rose Mortuary

---

[11] Although Canales in his declaration in opposition to the motion for summary judgment disputed Leavitt told him during this conversation that Grupo Deco's option had terminated due to uncured lease defaults, Canales did not disagree that Leavitt said Rose Mortuary wanted to sell the Paramount property.

would agree, if the transaction with Grupo Deco was not concluded, Grupo Deco would nonetheless retain an option to purchase the property that did not expire for another four-plus years. Nor does it make sense, with such an option outstanding, Rose Mortuary would proceed to find another buyer and complete a sale transaction within the next four months, let alone do so while concealing the option agreement from the new buyer. (Cf. *City of Hope National Medical Center v. Genentech, Inc., supra*, 43 Cal.4th at pp. 393-394 [a party's predispute, postcontracting conduct is powerful evidence of that party's intent and understanding of the contract at the time it entered into the agreement]; *Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 753-754 [same].)

In sum, contrary to the trial court's ruling, Downs was entitled to summary judgment on the ground the option agreement terminated upon the parties' signing of the 2013 purchase and sale agreement.

3. *Action Plus and Grupo Deco Failed To Identify Any Triable Issues of Material Fact Precluding Summary Judgment*

In addition to contesting Downs's interpretation of the 2013 purchase and sale agreement, in its opening and reply briefs Action Plus contends it was not given adequate notice and opportunity to respond to the issues upon which the trial court based its order granting summary judgment, which it asserts were not raised in Downs's moving papers, and, in any event, triable issues of fact existed as to whether Downs was bound by the option agreement and the assignability of that agreement. Because we affirm the order granting summary judgment based

solely on the termination of Grupo Deco's option rights effected by the 2013 agreement, we need not address those arguments.[12]

For its part, Grupo Deco argues title to the Paramount property was disputed because, when answering Grupo Deco's complaint in interpleader and Action Plus's first amended cross-complaint, Downs responded on behalf of Nancy L. Downs individually and as trustee of the 2000 Nancy L. Downs Revocable Trust. Accordingly, Grupo Deco asserts, when Downs averred in her answers that "Downs" owned the Paramount property, she created a disputed factual issue whether title was held by Downs individually or Downs as trustee or both.

This purported factual dispute is illusory. The undisputed evidence established that Rose Mortuary conveyed its fee interest in the Paramount property to Downs as trustee of the 2000 Nancy L. Downs Revocable Trust. No evidence was presented by Action Plus or Grupo Deco that the trustee thereafter conveyed title or any ownership interest to Downs as an individual (or to anyone else). Although Downs for whatever reason identified herself individually and as trustee in responding to certain

---

[12] In its reply brief Action Plus belatedly acknowledges that Downs's denials of allegations in Grupo Deco's and Action Plus's pleadings do not constitute "judicial admissions" and thus have no significance in evaluating the propriety of the trial court's order granting summary judgment. (See, e.g., *Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 452 ["a judicial admission is ordinarily *a factual allegation by one party that is admitted by the opposing party*"]; *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271 ["The admission of fact in a pleading is a 'judicial admission.' . . . 'It is a *waiver of proof* of a fact by conceding its truth, and it has the effect of removing the matter from the issues'"].)

pleadings,[13] at no time did she assert she owned any interest in the Paramount property as an individual. To the contrary, her cross-complaint sought to quiet title to the property in favor of Downs as trustee, and the summary judgment motion was brought by Downs solely in that capacity. In support of the motion for summary judgment, Downs declared, "In my capacity as trustee of the Trust, I own the real property and improvements located at 8545 Rosecrans Avenue, Paramount California 90727" and further averred that she owned the property in that capacity "[f]rom the date escrow closed on April 14, 2014 to the present time." Moreover, as Grupo Deco notes, neither the interpleader complaint nor Action Plus's pleading named Downs individually as a defendant. Accordingly, the additional identification of Downs as an individual in her responses to the pleadings was surplusage. (Cf. *McKoin v. Rosefelt* (1944) 66 Cal.App.2d 757, 768 ["[w]here the legal title to property is vested in the trustee, it is unnecessary to state in the complaint the means by which plaintiff acquired it, and so far as

---

[13] The trial court suggested this apparent mistake was prompted by Grupo Deco's original error in naming in its interpleader complaint both Downs as trustee and the trust itself, "as if they were separate defendants." (See generally *Han v. Hallberg* (2019) 35 Cal.App.5th 621, 632 ["a trust cannot sue or be sued or otherwise act in its own name; instead the trustee acts on behalf of the trust"].) The court continued, "Counsel for the Trust then made the understandable error of thinking that Downs had been personally sued," and explained it had ignored the distinction between Downs as individual and Downs as trustee "where it did not matter (in discovery) and insisted on the distinction where it did (on the judgment)."

concerns the defendant he is the real party in interest and may sue in his own name"].)

4. *Grupo Deco's Remaining Objections to the Judgment Lack Merit*

In addition to its arguments directed to the order granting summary judgment, Grupo Deco contends the court's judgment improperly determined that Grupo Deco had no interest in the property adverse to the title of "Nancy L., Downs, Trustee of the 2000 Nancy L. Downs Revocable Trust" because its lease constituted an interest or estate in the real property. It also argues the interpleaded funds should not have been released to Downs because Downs disputed the proper amount of rent owed by Grupo Deco and the correct amount was never adjudicated. Neither argument has merit.

As to the first issue, Grupo Deco reads the language of the judgment too broadly. Fee simple ownership of the Paramount property was what was at issue in the case and what was decided. (See generally *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162 ["[a] freehold estate is distinguished from other forms of estates in that it is of indeterminate duration [citations] and carries with it title to land"].) In her cause of action to quiet title Downs alleged, as the trustee of the 2000 Nancy L. Downs Revocable Trust, she was the "owner" of the Paramount property and sought a determination that there were no claims adverse to her title to, the property. Similarly, in her motion for summary judgment, which was directed in part to her cross-complaint to quiet title, Downs asked that "Title to the Property should be quieted in Downs as of April 14, 2014, the date the Grant Deed from Rose to Downs recorded." The order granting summary judgment paralleled this language,

"Because Defendant/Cross-Complainant Trust holds record title and there is no document which gives any other party a right to that title, Defendant Cross-Complainant Trust is entitled to a judgment quieting title in its favor." That is all the judgment now challenged by Grupo Deco provides. Paragraph 3 recites, "Title to the property described below is quieted in favor of Nancy L. Downs, Trustee . . ."; paragraph 4 states Downs, as trustee, is the owner of the property and entitled to rental income due the owner; and paragraph 6 states neither Grupo Deco nor Action Plus has any right, title, estate, lien or interest adverse to Downs's title.

Thus, by its terms the judgment recognizes Downs's ownership of a fee interest—title—as well as the potential existence of a tenant in possession paying rent. (See *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 163 ["'A leasehold is not an *ownership* interest . . . . It is for that reason that common parlance refers to the "owner" of a freehold estate, encumbered or unencumbered, but to the "holder" of a lease"'].) It does not adjudicate the validity of Grupo Deco's claim to a continuing leasehold interest, which was the subject of a pending unlawful detainer action. The trial court explained the limited reach of this language in the proposed judgment prepared by Downs when overruling Grupo Deco's objection, which Tuchmayer, Grupo Deco's counsel, appeared to accept: "If it's clarified that it's only dealing with title as opposed to possession, then, yeah, I could work with that."

As to the second issue, in its complaint in interpleader Grupo Deco alleged it had "no interest in the money it seeks to pay for the rent and use of the Property" and asked the court to "determine and enter an order setting forth the proper recipients

of the [interpleaded] funds." The complaint in interpleader did not allege there was any issue concerning the amount of rent due,[14] and Grupo Deco did not oppose summary judgment in favor of Downs or object to proposed language in the judgment on that basis. Nor would any such challenge have had merit.

Having determined Action Plus's attempt to exercise the 2000 option was ineffective and Downs as trustee was the owner of the property, entitled to rent from Grupo Deco, judgment was properly entered in favor of Downs on the complaint in interpleader; and no further action was needed before the court directed the clerk to distribute the interpleaded funds to Downs. (See generally *Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 43 ["[T]he interpleader proceeding is traditionally viewed as two lawsuits in one. The first dispute is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds"].) Any dispute as to the proper amount of rent owed by Grupo Deco (whether it be more or less than $9,700 per month) or other questions regarding Grupo Deco's rights and obligations as a tenant of Downs on the Paramount property were not at issue in the complaint in interpleader or the cross-complaints filed by Downs and Action Plus.

---

[14] Section 386, subdivision (e), authorizes trial of any issue of fact involved in determining a claim by one or more of the adverse claimants that the amount deposited by the interpleader stakeholder was less than the amount due. No such claim was made by Downs or Action Plus in this proceeding.

The Attorney Fees Appeal (B308965)

1. *Governing Law, the Contractual Fee Provisions and Standard of Review*

Section 1032, subdivision (b), provides, "Except as otherwise provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." Attorney fees are recoverable as costs under this section when authorized by contract (§ 1033.5, subd. (10)(A)) or by statute (§ 1033.5, subd. (10)(B)). Section 1032, subdivision (a)(4), defines "prevailing party" to include a defendant in whose favor a dismissal has been entered or against whom no relief has been obtained. It also includes the party with a net monetary recovery. In other situations, "'the 'prevailing party' shall be as determined by the court." (§ 1032, subd. (a)(4).)

Civil Code section 1717, subdivision (b)(1), provides, "[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract." (See *Hsu v. Abbara* (1995) 9 Cal.4th 863, 876 [prevailing party determination is to be made by comparing the parties' relative degrees of success "upon final resolution of the contract claims"].) "'[C]ourts have consistently held the prevailing party for the award of costs under [Code of Civil Procedure] section 1032 is not necessarily the prevailing party for the award of attorney's fees in contract actions under [Civil Code] section 1717.'" (*Zintel Holdings, LLC v. McLean* (2012) 209 Cal.App.4th 431, 438.) Although a necessary predicate for an award of attorney fees as costs, the finding a defendant is the prevailing party under section 1032 is not determinative of whether the defendant is also the prevailing party entitled to recover reasonable attorney fees

under section 1717. (*Zintel Holdings,* at p. 438; accord, *David S. Karton, A Law Corp. v. Dougherty* (2014) 231 Cal.App.4th 600, 607; see *DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1147 ["[t]he definition of 'prevailing party' in section 1032 is particular to that statute and does not necessarily apply to attorney fee statutes or other statutes that use the prevailing party concept"].)[15]

Section 386.6, subdivision (a), provides a party who has properly initiated an interpleader proceeding and follows specified procedures may, in the court's discretion, be awarded costs and reasonable attorney fees from the amount in dispute that was deposited with the court. The statute also provides, "At the time of final judgment in the action the court may make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper."

Paragraph 26 of the 2000 lease agreement between Rose Mortuary and Grupo Deco provided for an award of attorney fees to the prevailing party in any litigation between the parties "concerning the Premises, this Lease, or the rights and duties of either in relation to the Premises or Lease." Paragraph 9 of the 2000 option agreement between Grupo Deco and Rose Mortuary

---

[15] As held in *Santisas v. Goodin* (1998) 17 Cal.4th 599, 617 and *Khan v. Shim* (2016) 7 Cal.App.5th 49, 57, the fee provision in a contract, depending on the wording, may afford a right to recover attorney fees not affected by Civil Code section 1717—that is, a contractual right to recover fees in an action for tort claims as well as contract claims. Neither case, however, holds the prevailing party in an action on the contract with a fee provision may be determined under Code of Civil Procedure section 1032 without regard to Civil Code section 1717, as Downs suggested at oral argument.

provided for an award of attorney fees to the prevailing party in any legal action "arising out of or relating to this Agreement."

We review the legal basis for an award of attorney fees de novo and the amount of fees awarded for abuse of discretion. (See *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751 ["'it is a discretionary trial court decision on the propriety or amount of statutory attorney fees to be awarded, but a determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo'"]; *San Francisco CDC LLC v. Webcor Construction L.P.* (2021) 62 Cal.App.5th 266, 285 [same]; *Orozco v. WPV San Jose, LLC* (2019) 36 Cal.App.5th 375, 406 [same].)

2. *The Trial Court Did Not Abuse Its Discretion in Denying Downs's Motion for Attorney Fees from Grupo Deco*

Downs contends she obtained a net monetary recovery in the interpleader action, which both concerned the leased premises and related to the option agreement, and, as such, she was "entitled as a matter of right" to costs, including attorney fees, from Grupo Deco pursuant to sections 1032, subdivision (b), and 1033.5, subdivision (10)(A).[16] Grupo Deco disputes Downs's entitlement to attorney fees on several grounds.

First, Grupo Deco emphasizes that section 386.6, subdivision (a), provides for the recovery of costs and attorney fees by the stakeholder who initiated an interpleader action under certain circumstances, but does not authorize an award of costs and fees to the successful adverse claimant—that is, it establishes a one-way fee shifting scheme. Putting aside whether

---

[16] Downs has not pursued on appeal her alternate claim to attorney fees as the prevailing party in her cross-complaint to quiet title.

that provision's silence as to an award of costs or fees to an adverse claimant comes within section 1032, subdivision (b)'s opening proviso, "[e]xcept as otherwise expressly provided by statute," as the trial court at least impliedly ruled—a question vigorously debated by Downs and Grupo Deco—Grupo Deco correctly asserts neither section 386.6 nor any other statute authorized the award of attorney fees to Downs within the meaning of section 1033.5, subdivision (a)(10)(B). Downs does not argue to the contrary.

Next, as it did in the trial court, Grupo Deco disagrees the attorney fee provisions of its 2000 lease or the 2000 option agreement provide a basis for an award of fees in the interpleader action. The 2000 lease expired by its terms on April 30, 2018, Grupo Deco notes; the interpleaded rental payments of $9,700 per month were based on the new lease it claimed to have entered with Downs beginning May 1, 2018. And although Action Plus's adverse claim to receive rent from Grupo Deco starting May 1, 2018 was predicated on Action Plus's purported ownership of the Paramount property following exercise of the 2000 option, Grupo Deco argues, the complaint in interpleader to determine which entity should receive rent did not arise out of, or relate to, the option agreement.

In any event, Grupo Deco continues, if the complaint in interpleader was based on either the lease or option agreement, Downs's contractual right to an award of attorney fees had to be determined under Civil Code section 1717, which grants the trial court broad discretion to determine if there was a prevailing party.[17] (*Blue Mountain Enterprises, LLC v. Owen* (2022)

---

[17] Although Downs suggests the attorney fee provisions in the lease and option agreement were broad enough to cover

74 Cal.App.5th 537, 558 ["'[a] trial court has wide discretion in determining which party is the prevailing party under [Civil Code] section 1717, and we will not disturb the trial court's determination absent "a manifest abuse of discretion, a prejudicial error of law, or necessary findings not supported by substantial evidence"'"]; *Zintel Holdings, LLC v. McLean*, *supra*, 209 Cal.App.4th at p. 439 ["[t]he trial court has broad discretion in making this determination"]; *Ajaxo Inc. v. E*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 58 [same].) The trial court did not abuse that discretion, Grupo Deco argues, in concluding as between it and Downs there was no prevailing party because, as the court wrote, "A 'defendant' in an interpleader cannot 'prevail' against the 'plaintiff' because literally nothing is being required of him. An interpleader is an invitation, no more."

We agree the trial court acted well within its discretion in ruling Downs, although successful as compared to Action Plus in the interpleader action, was not the prevailing party entitled to an award of attorney fees from Grupo Deco. As the Supreme Court has explained, "'[I]n deciding whether there is a "party prevailing on the contract," the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources.'" (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 974; accord, *Hsu v. Abbara*, *supra*, 9 Cal.4th at p. 876.) Grupo Deco's primary litigation objective in the interpleader action was for the court to determine where it

---

noncontractual claims, she argues on appeal, as she did in the trial court, that Grupo Deco's interpleader action was "on a contract."

should send its rent payments. It achieved that objective. It did not obtain any affirmative relief, nor did it seek any. As the trial court succinctly stated, "[T]hat's not how interpleader works."

To be sure, as Downs notes, Grupo Deco's complaint in interpleader also asked for a discharge and an award of attorney fees and costs, which it did not obtain. As the trial court explained, a motion for discharge had been scheduled and was then mooted by the order granting Downs's motion for summary judgment. And without a discharge, no award of fees to Grupo Deco was authorized by section 386.6, subdivision (a). But Grupo Deco's failure to attain these collateral goals in no way made irrational the trial court's determination that Downs was not properly considered the prevailing party in the interpleader action for purposes of an award of attorney fees against Grupo Deco. To the contrary, although written in a different context, this court's holding in *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 881, is equally applicable to the present situation: "[A]n interpleader action is not adversarial as between a claimant and the stakeholder and, hence, Cantu [the claimant] could not prevail against Lincoln [the stakeholder], or vice versa."

3. *Downs Is Not Entitled To Attorney Fees Based on Her Argument the Interpleader Action Was Collusive*

Asserting that Grupo Deco colluded with Action Plus, Downs contends the complaint in interpleader was not a "true" interpleader action and, as a consequence, even if the successful adverse claimant is not usually entitled to recover attorney fees from an interpleading stakeholder, that rule should not apply under the circumstances here. Downs's argument is fundamentally flawed.

First, Downs is certainly correct that "an interpleader action may not be maintained "'upon the mere pretext or suspicion of double vexation.'"" (*Placer Foreclosure, Inc. v. Aflalo* (2018) 23 Cal.App.5th 1109, 1113; accord, *Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 608 [the interpleader plaintiff "'must allege facts showing a reasonable probability of double vexation' [citation] or a 'valid threat of double vexation'"].) But "[a]n objection to a fee award on the ground the interpleader action itself was improper must be made during the 'first phase' of the proceeding, or such a challenge or objection is forfeited." (*Hood v. Gonzales* (2019) 43 Cal.App.5th 57, 84; accord, *Farmers New World Life Ins. Co. v. Rees* (2013) 219 Cal.App.4th 307, 317 [interpleaded party "forfeited the right to contest the propriety of the interpleader action by not doing so during the initial phase of the proceeding"].) Although Downs apparently complained of Grupo Deco's cooperation with Action Plus throughout the proceedings, the record does not indicate she ever demurred to the complaint in interpleader or otherwise formally challenged Grupo Deco's right to interplead the funds, as she was entitled to do.[18] (See, e.g., *Placer Foreclosure*, at p. 1115 [demurrer to improper interpleader action properly sustained]; *Westamerica Bank*, at p. 608 [same].) Downs certainly has not appealed an order denying such a motion. Accordingly her objection to the fee decision on this basis has been forfeited.

---

[18] Rejecting Downs's argument regarding collusion and bad faith made in support of its motion for attorney fees, the trial court observed, "If the Trust wanted to argue that the interpleader action was collusive, or filed in bad faith, it has had many opportunities to do just that."

Second, although the strength of their respective claims may have differed, there could be no real question that Downs and Action Plus each asserted it owned the Paramount property and was entitled to collect rent from Grupo Deco. Grupo Deco, which assigned the option to Action Plus while apparently still negotiating a lease extension with Downs, not surprisingly preferred to deal with Action Plus and plainly cooperated with Action Plus in this litigation. But Downs presents no legal authority for her contention a stakeholder confronting genuine conflicting demands to property (here, rent payments) cannot compel the adverse claimants to litigate their claims against each other by filing a complaint in interpleader simply because it favors one of the competing parties—that is, that such an interpleader action is a "sham" somehow entitling her to relief (an award of attorney fees) not otherwise available to an interpleaded claimant. Contrary to Downs's position, "disinterested" in the interpleader context means only a party without a claim to the property at issue, not also one who does not have a rooting interest in the outcome of the dispute. (See, e.g., *Hancock Oil Co. v. Hopkins* (1944) 24 Cal.2d 497, 503 [as an essential element of a traditional interpleader action, "the one seeking the relief must not have nor claim any interest in the subject matter"]; cf. *Hood v. Gonzales*, *supra*, 43 Cal.App.5th at p. 72 [explaining that under current law the scope of interpleader has been "broadened and enlarged"; "'[p]artial interpleader, where the obligor admits some liability but makes a partial claim or asserts a partial interest, is also allowed,'" but it is still required "that the claimants seek the same thing, debt, or duty"].)

Third, without meaningfully addressing the trial court's evaluation of her claim of bad faith, Downs repeats the principal points she made during the fee motion to argue Grupo Deco, far from being a disinterested stakeholder, acted in bad faith by cooperating with Action Plus in discovery and actively advocating on behalf of Action Plus in opposition to the motion for summary judgment. Downs also emphasizes that at an early stage in the proceedings a different judge denied Grupo Deco's motion for a preliminary injunction to halt potentially conflicting unlawful detainer proceedings, finding a reasonable inference could be made from the evidence then before it that the assignment of the option to Action Plus was pretextual, and "it would be inequitable to issue the preliminary injunction based on [Grupo Deco's] unclean hands."

The trial court expressly considered this information and concluded, while acknowledging Grupo Deco clearly favored Action Plus in the litigation, Downs had failed to establish collusion or bad faith on the part of Grupo Deco. In particular, the court discounted the ruling on the request for a preliminary injunction, which, the court explained, had been made in early in the proceedings and in the absence of an evidentiary presentation by either Grupo Deco or Action Plus. And although indicating it was odd (and somewhat confusing to the court) for an interpleader plaintiff to express so strongly its support for one of the adverse claimants, the court found Downs had failed to present sufficient proof of bad faith. Deferring as we must to the trial court's assessment of the parties' conduct, Downs's claim of bad faith as justifying an award of fees necessarily fails. (Cf. *Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60 ["a 'reviewing court is without power to substitute its deductions for

those of the trial court"']; *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 544 [same].)

**DISPOSITION**

The judgment and October 5, 2020 postjudgment fee order are affirmed. The parties are to bear their own costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.